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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA**

SUNSHINE DEERING, as an individual  
and on behalf of all others similarly situated,

Plaintiff,

vs.

ROMAN EMPIRE ABA SERVICES, INC.,  
a California corporation; and DOES 1  
through 50, inclusive,

Defendants.

Case No.: RG20072383

*(Assigned for all purposes to the Hon. Brad  
Seligman, Dept. 23)*

**CLASS ACTION**

**PLAINTIFF'S NOTICE OF MOTION AND  
MOTION FOR PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT**

**Hearing Information**

Date: May 9, 2023

Time: 3:00 p.m.

Dept.: 23

**Reservation ID: 530453113646**

Complaint Filed: September 2, 2020

Trial Date: Not Set

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on May 9, 2023, at 3:00 p.m., or as soon thereafter as the matter may be heard, before the Honorable Brad Seligman, judge presiding, in Department 23 of the above referenced Court located at 1221 Oak Street, Oakland, California 94612, Plaintiff Sunshine Deering (“Plaintiff”) will and hereby does move this Court for the following relief with respect to the Joint Stipulation of Class and Representative Action Settlement Agreement (“Settlement Agreement” or “Agreement”) entered into by Plaintiff and Defendant Roman Empire ABA Services, Inc. (“Defendant”) (together with Plaintiff, the “Parties”):

1. That the Court approve the Settlement Agreement referenced above;
2. That the Court conditionally certify the following Class (“Class”) for settlement purposes only: “all non-exempt employees who are or previously were employed by Roman Empire ABA Services, Inc. in California during the period of September 2, 2016, through November 30, 2022.”
3. That Plaintiff Sunshine Deering be appointed as Class Representative and Larry W. Lee and Nicholas Rosenthal of Diversity Law Group, P.C. be appointed as Class Counsel;
4. That the Court preliminarily approve the Settlement Agreement and the Gross Settlement Amount of Three Hundred Eighty Thousand Dollars (\$380,000.00);
5. That the Court finds on a preliminary basis that the Settlement Agreement appears to be within the range of reasonableness of a settlement, including the amount allocated to PAGA penalties, Class Representative Service Award to Plaintiff, Class Counsel Award, Settlement Administration Costs, and the allocation of payments to Class Members, that could ultimately be given final approval by this Court;
6. That the Court approve the mailing of the Notice of Pendency of Class Action Settlement (“Class Notice”) to be sent to Class Members;
7. That the Court appoint Phoenix Settlement Administrators as the Settlement Administrator; and
8. That the Court schedule the matter for a Final Fairness and Final Approval hearing.

1 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which  
2 provides for court approval of the settlement of a purported class action and allows the Court to  
3 preliminarily certify a class for settlement purposes.

4 The basis for this Motion, filed without any opposition from Defendant, is that the  
5 proposed settlement is fair, adequate, and reasonable, and the procedures proposed by the Parties  
6 are adequate to ensure the opportunity of Class Members to participate in, opt-out of, or object to  
7 the settlement.

8 This Motion will be based on the attached Memorandum of Points and Authorities, the  
9 Settlement Agreement and the proposed Notice, and the supporting Declarations of Larry W. Lee,  
10 Nicholas Rosenthal, and Plaintiff Sunshine Deering, upon the oral arguments of counsel (should  
11 there be any), and on the complete records and file herein.

12  
13 DATED: April 17, 2023

DIVERSITY LAW GROUP, P.C.

14  
15 By:   
16 Larry W. Lee  
17 Nicholas Rosenthal  
18 Attorneys for Plaintiff Sunshine Deering and the  
19 Class  
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1 **I. INTRODUCTION**

2 Plaintiff Sunshine Deering (“Plaintiff”) seeks preliminary approval of a proposed  
3 \$380,000.00 non-reversionary class action settlement with Defendant Roman Empire ABA  
4 Services, Inc. (“Defendant”). The Gross Settlement Amount is inclusive of settlement payments  
5 to Participating Class Members, attorneys’ fees and costs, the Class Representative Service  
6 Payment to Plaintiff for her services as class representative, PAGA Payment, and Settlement  
7 Administration Costs as provided by this settlement. The settlement will provide substantial  
8 monetary payments to approximately 794 Class Members. And, as set forth more fully below, the  
9 proposed settlement satisfies all the criteria for settlement approval under California law. The  
10 settlement was reached after extensive investigation and litigation.

11 **II. FACTUAL AND PROCEDURAL BACKGROUND**

12 **A. The Complaint**

13 On or about July 29, 2020, Plaintiff filed a notice with the Labor & Workforce  
14 Development Agency (“LWDA”), alleging that Defendant violated §§ 201-203, 204, 226, 226.7,  
15 and 2802, pursuant to Labor Code § 2699. Declaration of Nicholas Rosenthal (“Rosenthal Decl.”)  
16 ¶ 2.

17 Thereafter, on September 2, 2020, Plaintiff filed a class and representative action  
18 complaint against Defendant in in the Superior Court of California for the County of Alameda on  
19 behalf of herself and others similarly situated. *Id.* ¶ 3. As set forth in the Complaint, Plaintiff  
20 alleges that Defendant maintained a policy and practice of: (1) failing to reimburse business-  
21 related expenses in violation of Labor Code § 2802; (2) failing to provide off-duty meal periods in  
22 violation of Labor Code §§ 226.7 and 512; (3) failing to provide off-duty rest periods in violation  
23 of Labor Code § 226.7; (4) failing to provide accurate, itemized wage statements in violation of  
24 Labor Code § 226; (5) engaging in unlawful business practices in violation of Business and  
25 Professions Code § 17200, *et seq.*; and (6) seeking civil penalties under the Private Attorneys  
26 General Act (“PAGA”), Labor Code § 2698, *et seq.* (“Operative Complaint” or “Action”). *Id.*

27 **B. Summary of Investigation and Discovery**

28 Class Counsel investigated the facts surrounding the claims in this action before filing the

lawsuit and conducted discovery during the course of litigating and prosecuting this case. Rosenthal Decl. ¶ 5. On September 28, 2021, Plaintiff served an initial set of Requests for Production of Documents and Special Interrogatories. *Id.* ¶ 6. Among other relevant topics, the discovery called for Defendant to provide verified responses regarding the number of putative class members and applicable pay periods. *Id.* The discovery also called for Defendant to produce Plaintiff's personnel file and wage statements and Defendant's relevant policies, including meal and rest period policies, reimbursement policies, and payroll policies. *Id.* The Parties met and conferred extensively regarding the requests and responses. *Id.*

On or about December 17, 2021, Defendant served Responses to Request for Production of Documents, Set One and Responses to Special Interrogatories, Set One. Rosenthal Decl. ¶ 7. Defendant also produced responsive documents. *Id.* ¶ 7.

### **C. The Parties Participate in Mediation**

Early in the litigation, the Parties agreed to participate in private mediation. Rosenthal Decl. ¶ 8. Defendant subsequently retained new counsel and the initial mediation date was taken off calendar. *Id.* In or about July 2022, the Parties agreed to engage in private mediation with Lisa Klerman, Esq. *Id.* ¶ 9. In advance of the mediation, Defendant produced payroll data, which allowed Plaintiff to further investigate and evaluate the claims. *Id.* ¶ 9. The data produced by Defendant included: (1) the estimated number of putative class members; (2) the estimated number of putative class members who separated employment during the liability period; (3) the average hourly rate of putative class members during the liability period; (4) the aggregate number of pay periods during the liability period; and the total number of shifts worked by the putative class. *Id.* Based upon this information, counsel for Class Counsel conducted a full damage analysis. *Id.*

On November 30, 2022, the Parties participated in private mediation with mediator Lisa Klerman, Esq. Rosenthal Decl. ¶ 10. After a full day of negotiations, the Parties were not able to reach a settlement. *Id.* However, with Ms. Klerman's assistance, the Parties continued settlement discussions. *Id.* After the exchange of further information and extended negotiations, the Parties reached an agreement in principle which was memorialized in a Memorandum of Understanding.

1 *Id.*

2 **III. SUMMARY OF THE CURRENT SETTLEMENT**

3 The material terms of the settlement are described below and set forth in detail in the Joint  
4 Stipulation of Class and Representative Action Settlement Agreement (“Settlement Agreement”  
5 or “Agreement”). A true and correct copy of the Settlement Agreement is attached to the  
6 Declaration of Nicholas Rosenthal as **Exhibit A**.

7 **A. The Class Definition**

8 The settlement seeks to release the claims of “all non-exempt employees who are or  
9 previously were employed by Roman Empire ABA Services, Inc. in California during the period  
10 of September 2, 2016, through November 30, 2022.” Agreement ¶ 2. As of the time of mediation,  
11 Defendant estimates that there are approximately 794 unique individuals comprising the Class. *Id.*

12 **B. The Gross Settlement Amount**

13 The settlement provides for the gross settlement amount (“Gross Settlement Amount”) of  
14 \$380,000.00. Agreement ¶ 12. The settlement allocates \$40,000.00 of the Gross Settlement  
15 Amount for PAGA penalties (the “PAGA Payment”). *Id.* ¶ 15. Pursuant to the PAGA, seventy-  
16 five percent (75%) of the PAGA Payment, *i.e.*, the sum of \$30,000.00, will be paid to the  
17 California Labor and Workforce Development Agency (“LWDA”). *Id.* The remaining twenty-five  
18 percent (25%) of the PAGA Payment, *i.e.*, the sum of \$10,000.00, will be distributed to the Class.  
19 *Id.*

20 **C. The Calculation of the Individual Settlement Payment**

21 The balance of the Gross Settlement Amount remaining after deduction of the approved  
22 Class Representative Service Payment to Plaintiff, Settlement Administration Costs, PAGA  
23 Payment, and Class Counsel Award (“Net Settlement Amount”), will be available for distribution  
24 to Participating Class Members. Agreement ¶ 14. The Parties currently estimate that the Net  
25 Settlement Amount will be \$176,333.33. Rosenthal Decl. ¶ 14.

26 The Individual Settlement Payments payable to each Participating Class Member from the  
27 Net Settlement Amount will be based on the total number of pay periods in which the employee  
28 worked, as compared to the total number of pay periods worked by all Class Members.

1 Agreement ¶ 37.a.i. The Individual Settlement Payments from the Net Settlement Amount shall  
2 be allocated as follows: 80% as penalties, 10% as interest, and 10% as wages. *Id.* ¶ 37.a.

3 Participating Class Members will also receive a portion of the PAGA Payment based on  
4 the total number of pay periods in which the employee worked, as compared to the total number  
5 of pay periods worked by all Class Members. Agreement ¶¶ 15, 37.a.i. The Individual Settlement  
6 Payments from the PAGA Payment shall be allocated as follows: 100% as penalties. *Id.* ¶ 37.a.

7 Based on the approximate number of Class Members (794), each Class Member will be  
8 entitled to recover on raw average, up to \$234.68 each.<sup>1</sup> Rosenthal Decl. ¶ 23. The amount any  
9 particular Class Member will be entitled to recover will be greater or lower than this average  
10 depending on the number of pay periods he or she worked, with some entitled to receive more,  
11 and others less. *Id.* This is fair, as it strives to allocate greater penalties to individual employees  
12 who experienced a higher number of alleged violations. *Id.*

13 **D. The Settlement is Non-Reversionary**

14 This is a non-reversionary settlement. The entirety of the Gross Settlement Amount will  
15 be fully paid out. Agreement ¶¶ 37, 37.a.ii. Settlement Class Members will have 180 days from  
16 the issuance of the settlement payment to cash the check. *Id.* ¶ 37.a. After the expiration of 180  
17 days, the funds represented by uncashed settlement checks will be remitted to the Parties'  
18 designated *cy pres* recipient: Legal Aid at Work. *Id.* ¶ 37.a.ii.

19 **E. Attorneys' Fees and Reimbursement of Litigation Costs**

20 As part of the settlement, Defendant does not object to Class Counsel's request for  
21 attorneys' fees up to one-third of the Gross Settlement Amount, *i.e.*, the sum of \$126,666.67, plus  
22 up to \$15,000.00 for reimbursement of litigation costs, subject to the Court finally approving this  
23 Settlement. Agreement ¶ 37.c.

24 ///

25 \_\_\_\_\_  
26 <sup>1</sup> Class Members do not need to do anything should they wish to receive their share of the  
27 settlement funds. This substantially decreases the amount of burden each Class Member must  
28 bear in order to receive his/her settlement share. If a Class Member does not wish to take part in  
this settlement and be bound by the release of the class claims, he/she must submit an exclusion  
request. Such obligations are thoroughly identified in the Notice Packet. *See* Agreement, Ex. A.

1           **F.       Enhancement Payment to Plaintiff**

2           Pursuant to the terms of the Settlement Agreement, and without opposition from  
3 Defendant, Plaintiff is entitled to request a Class Representative Service Award. Agreement ¶ 8.  
4 Specifically, Plaintiff requests payment in the amount of \$10,000.00. *Id.* ¶ 37.b. Both Plaintiff and  
5 Class Counsel expressly acknowledge that the Court has final discretion in any fee award or  
6 Service Payment. *Id.* ¶¶ 37.b, 37.c.

7           **G.       Settlement Administration Costs**

8           Finally, the settlement provides for the payment of the fees and expenses incurred by the  
9 Settlement Administrator. Agreement ¶ 25. The Parties have agreed to a capped fee of \$12,000.00  
10 to be paid to Phoenix Settlement Administrators. *Id.* ¶¶ 26, 37.e.

11          **H.       Scope of the Class Members' Release**

12          The scope of the release, as listed below, is identified in the Settlement Agreement at  
13 paragraph 19, as well as in the Class Notice that will be sent to Class Members. Upon the  
14 Effective Date, Plaintiff and all Participating Class Members will release the following:

15               all claims, damages, penalties, interest, liabilities, or causes of action which arise  
16               from the facts asserted in the Action, including, without limitation to, all claims  
17               under the California Labor Code §§ 201-203, 226(a), 226.7, 512, and 2802, and the  
              California Business and Professions Code § 17200, *et seq.* ("Released Claims").

18 Agreement ¶ 19. As shown, the scope of the release is narrow and is limited to the claims arising  
19 during the Class Period. Agreement ¶¶ 19, 29; Rosenthal Decl. ¶ 27.

20          The LWDA will also release the following PAGA claims ("Released PAGA Claims")  
21 arising during the period of July 29, 2019, through November 30, 2022:

22               all claims, damages, penalties, interest, liabilities, or causes of action which arise  
23               from the facts asserted in the Action under the Private Attorneys General Act Labor  
24               Code § 2698, *et seq.* premised upon violation of Labor Code §§ 201-203, 226(a),  
              226.7, 512, and 2802.

25 Agreement ¶¶ 20, 30.

26          **I.       Notice to Class Members**

27          Should the Court grant the instant motion, Defendant will provide the Settlement  
28 Administrator with a list containing each Class Member's each Class Member's full name, last

1 known mailing address, last known telephone number (if available), Social Security Number, start  
2 date of employment, end date of employment, and number of pay periods worked during the  
3 Class Period. Agreement ¶¶ 5, 36. Within fourteen (14) calendar days of receipt of the Class List,  
4 the Settlement Administrator will mail the Class Notice to Class Members. *Id.* ¶ 36.a. Prior to  
5 mailing the Class Notice to Class Members, the Settlement Administrator shall perform a search  
6 based on the National Change of Address Database for information to update and correct for any  
7 known or identifiable address changes. *Id.* Any Class Notice returned to the Settlement  
8 Administrator as non-deliverable on or before the opt-out deadline shall be sent via regular first-  
9 class U.S. mail to the forwarding address affixed thereto. *Id.* ¶ 36.a.i. If no forwarding address is  
10 provided, the Settlement Administrator shall perform a skip trace or other search to locate the  
11 most current address and resend the Class Notice. *Id.*

12 As set forth in the Class Notice, Class Members will be allowed to opt out of or object to  
13 the settlement within 45 days of the initial mailing of the Notice Packet. Agreement ¶¶ 23, 36.c,  
14 36.d.

#### 15 **IV. TWO-STEP APPROVAL PROCESS**

16 Any settlement of a class action lawsuit must be reviewed and approved by the Court.  
17 This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final  
18 review after notice has been distributed to the class members for their comment or objections.

19 Preliminary approval by the trial court is simply a conditional finding that the settlement  
20 appears to be within the range of acceptable settlements. As Professor Newberg comments, “[t]he  
21 strength of the findings made by a judge at a preliminary hearing or conference concerning a  
22 tentative settlement proposal may vary. The court may find that the settlement proposal contains  
23 some merit, is within the range of reasonableness required for a settlement offer, or is  
24 presumptively valid subject only to any objections that may be raised at a final hearing.” Alba  
25 Conte & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.26 (4th ed. 2002).

26 The procedures for the parties’ submission of a proposed settlement for preliminary  
27 approval by the court also are discussed in *4 Newberg on Class Actions*:

28 When the parties to an action reach a monetary settlement, they will usually prepare

1 and execute a joint stipulation of settlement, which is submitted to the court for  
2 preliminary approval. The Joint Stipulation should set forth the central terms of the  
3 agreement, including but not limited to, the amount of settlement, form of payment,  
manner of determining the effective date of settlement and any recapture clause.

4 *Id.* § 11.24.

5 Here, the Parties have reached such an agreement and have submitted to this Court in  
6 connection with this Motion a copy of the Settlement Agreement fully setting forth the agreement  
7 reached among the Parties. *See* Rosenthal Decl. ¶ 11, Ex. A. The settlement sets forth all terms of  
8 the agreement reached by the Parties, which include, among other things, the method for  
9 calculating the Class Members' Individual Settlement Payments.

10 **V. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE SETTLEMENT**

11 To prevent fraud, collusion, or unfairness to the class, the settlement of a class action  
12 requires court approval. *Accord Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-01 (1996).  
13 In considering whether a settlement is reasonable, the trial court should consider relevant factors,  
14 which may include the strength of plaintiff's case, the risk, expense, complexity, and likely  
15 duration of further litigation, the risk of maintaining class action status through trial, the amount  
16 offered in settlement, the extent of discovery completed and the stage of the proceedings, the  
17 experience and views of counsel, the presence of a governmental participant, and the reaction of  
18 the class members to the proposed settlement. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App.  
19 4th 116, 128 (2008).

20 In order to approve a class action settlement, the court must satisfy itself that the class  
21 settlement is within the "ballpark" of reasonableness. *Kullar*, 168 Cal. App. 4th. at 133. The  
22 record need not contain an explicit statement of the maximum theoretical recovery. *Munoz v. BCI*  
23 *Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 408-09 (2010).

24 **A. The Settlement Was Reached Through Arm's Length Negotiations Between**  
25 **Experienced Wage and Hour Attorneys**

26 As demonstrated in Section II *supra*, the settlement is a result of arm's length  
27 negotiations. The Parties attended a full-day mediation with experienced wage and hour mediator,  
28 Lisa Klerman. During the mediation, the Parties spoke at length about the strengths and

1 weaknesses of each side's claims and defenses, whether the claims could be certified, and the  
2 scope of Defendant's liability. With the assistance of Ms. Klerman, the Parties reached an  
3 agreement for a global resolution of the Action for a non-reversionary fund of \$380,000.00.

4 **B. The Parties Engaged in Significant Investigation and Discovery**

5 Plaintiff engaged in extensive investigation and discovery regarding the merits of the  
6 claim and Defendant's defenses, including propounding Requests for Production of Documents  
7 and Special Interrogatories, reviewing Defendant's relevant policies, and researching Defendant's  
8 defenses. Rosenthal Decl. ¶ 29. Additionally, in advance of the mediation, Defendant produced  
9 payroll data for putative class members. *Id.* ¶ 11. Using the information garnered through both  
10 formal and informal discovery, Class Counsel conducted a full damages and penalty analysis. *Id.*

11 **C. The Strengths and Weaknesses of the Class and Representative PAGA Claims**

12 For the reasons set forth below, the settlement affords fair relief to the Class, while  
13 avoiding significant legal and factual battles, especially at class certification and trial, that  
14 otherwise may have prevented the Class from obtaining any recovery at all. Rosenthal Decl. ¶ 30.  
15 Thus, although Class Counsel believes the claims are meritorious, they are experienced and  
16 realistic, and understand that the outcome of a trial, and the outcome of any appeals that would  
17 inevitably follow if the class prevailed at trial, are inherently uncertain in terms of both outcome  
18 and duration. *Id.* ; Declaration of Larry W. Lee ("Lee Decl.") ¶ 4.

19 **1. The Strengths and Weaknesses of the Reimbursement Claim**

20 Plaintiff alleges that Defendant violated Labor Code § with respect to its alleged failure to  
21 reimburse employees for the costs associated with using their personal cellular phones and  
22 vehicles for work-related purposes. Rosenthal Decl. ¶ 31. Labor Code § 2802 requires Defendant  
23 to indemnify its employees for all necessary business expenditures incurred by the employee as  
24 an "indirect consequence of the discharge of his or her duties." The requirement to reimburse  
25 business expenses includes reimbursement of costs associated with business use of a personal cell  
26 phone and/or vehicle. To show liability under Section 2802, an employee need only show that he  
27 was required to use a personal device for work-related purposes, and that he was not reimbursed.  
28 *See Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1145 (2014) (holding that an

1 employer must reimburse an employee for the reasonable expense of the mandatory use of a  
2 personal cell phone). Here, Plaintiff contends that she and the putative class were required to use  
3 their personal automobiles to drive to appointments to meet patients. Defendant's reimbursement  
4 scheme was to pay employees an extra 90 cents per hour worked to reimburse employees for their  
5 mileage. Plaintiff contends that this amount was far short of a full reimbursement at the IRS  
6 Mileage rate, as she and her fellow putative class members often drove 20 miles per day between  
7 appointments.

8 While Plaintiff believes in the merits of the claim, Defendant maintains that the claim is  
9 not suitable for class treatment because liability hinges on individualized inquiries into the actual  
10 expenses incurred by class members and whether each class member was fully reimbursed  
11 pursuant to the policy. *Id.* ¶ 32. Defendant maintains that most putative class members were  
12 driving under ten miles per day for work, which would mean they were often over-reimbursed. *Id.*

## 13 **2. The Strengths and Weaknesses of the Meal and Rest Period Claims**

14 Plaintiff alleges that Defendant violated Labor Code §§ 226.7 and 512 with respect to its  
15 alleged failure to provide off-duty meal and rest periods and/or pay premium compensation for  
16 missed meal and rest periods. Rosenthal Decl. ¶ 33. Labor Code § 226.7 requires Defendant to  
17 "pay one additional hour of pay at the employee's regular rate of compensation for each workday  
18 that the meal or rest or recovery period is not provided."

19 Plaintiff maintains that there was no time set aside in employee schedules for meal or rest  
20 periods and that appointments were scheduled in such a manner that taking these periods was not  
21 possible. *Id.* ¶ 35. Moreover, Plaintiff maintains that any breaks she was able to take were not  
22 legally compliant because she was required to always respond to any work related calls she  
23 received at any time, even when on breaks. *Id.* However, Plaintiff acknowledges that the language  
24 in the employee handbook on these issues is vague and that employees were not explicitly  
25 instructed in writing to answer their phones even when on breaks. *Id.*

## 26 **3. The Strengths and Weaknesses of the Wage Statement Claim**

27 Plaintiff alleges a claim under Labor Code § 226(a) predicated on Defendant's alleged  
28 failure to list "all applicable hourly rates in effect during the pay period and the corresponding

number of hours worked at each hourly rate” on the wage statements issued to Class Members. Labor Code § 226(a)(9). Plaintiff alleges that as a result of the violations above, the wage statements issued to putative class members did not comply with California law. Rosenthal Decl. ¶ 37. Specifically, the wage statements did not list the rate or hours for “drive time” or “misc pay,” both of which were paid on an hourly basis. *Id.*

However, Plaintiff would face the burden of demonstrating that any alleged omission of information from the wage statements was a “knowing and intentional failure” by Defendant to comply with Labor Code § 226(a). *See Harris v. Vector Mktg. Corp.*, 656 F. Supp. 2d 1128, 1145-46 (N.D. Cal. 2009) (granting summary judgment in favor of employer and finding its conduct was not “knowing and intentional”); Rosenthal Decl. ¶ 38. Defendant also would have argued that penalties under Section 226 are subject to a similar “good faith” defense as articulated above in the context of Plaintiff’s claims for waiting time penalties. *See, e.g., Naranjo v. Spectrum Security Services, Inc.*, 88 Cal. App. 5th 937 (2023); *Apodaca v. Costco Wholesale Corp.*, 2014 WL 2533427, at \*3 (C.D. Cal. June 5, 2014) (“Where an employer has a good faith belief that it is not in violation of Section 226, any violation is not knowing and intentional.”); *Wright v. Adventures Rolling Cross Country, Inc.*, 2013 WL 1758815, at \*9 (N.D. Cal. Apr. 24, 2013) (same); *Ricaldai v. U.S. Investigations Servs., LLC*, 878 F. Supp. 2d 1038, 1047 (N.D. Cal. 2012) (same); *Dalton v. Lee Publ'ns, Inc.*, 2011 WL 1045107, at \*5 (S.D. Cal. Mar. 22, 2011) (same). *Naranjo* was only recently issued by the California Court of Appeal, but Defendant would most likely argue that it created a subjective “good faith” standard that protects an employer from Labor Code Section 226 penalties so long as they believed they were acting in accordance with the law. Considering the strengths and weaknesses of this claim, too, supports the proposed settlement as fair, adequate, and reasonable. *Id.*

#### **4. The Strengths and Weaknesses of the 203 Claim**

Plaintiff’s derivative waiting time penalties claim faces the same issue that the wage statement claim faces; can Plaintiff prove Defendant was not acting in “good faith”? Here, again Defendant will argue that the law remains ambiguous as to whether a meal or rest period is “on duty” such that it is noncompliant just because there is the *mere possibility* that the phone may

ring during that break. Rosenthal Decl. ¶ 40.

## **5. The Strengths and Weaknesses of the PAGA Claims**

Plaintiff also pursues representative PAGA claims. Given that the PAGA claim is derivative in nature, it faced the same obstacles. The PAGA claim also was subject to unique considerations given the Court's discretion to lower penalties. Rosenthal Decl. ¶ 43.

### **D. The Settlement is Reasonable as Compared to the Potential Estimated Value of the Class and Representative PAGA Claims**

Plaintiff premised the settlement with the risks and benefits addressed above in mind. For each claim, Plaintiff analyzed the potential exposure based on data provided by Defendant in advance of mediation. For Plaintiff's reimbursement claim, Plaintiff estimates she and her fellow putative Class members drove 100 miles per week for work. *Id.* ¶ 33. Assuming this same amount of driving for the entire class and an IRS Mileage Rate of 58 cents per mile, this comes out to \$58 owed per employee per week. *Id.* However, employees were reimbursed 90 cents per hour worked for expenses. *Id.* Assuming 40 hours worked per week, this comes out to \$36 in expenses paid, leaving a \$22 delta per week. There were approximately 11,960 workweeks worked by the putative class, so this comes out to \$263,120. *Id.*

With regard to Plaintiff's meal and rest period claims, there were 50,816 shifts worked by the putative class, though it is not known if all these shifts were meal period eligible. *Id.* ¶ 36. The average rate of pay for the putative class was \$21.59 per hour. *Id.* Assuming *all* shifts were meal period eligible and that every meal and rest period was non-compliant because of the requirement that employees answer their phones while on break if a call was work-related, this comes out to \$1,097,117 each for meal and rest periods. *Id.*

Further, Plaintiff calculated waiting time penalties under Labor Code § 203 based on 533 putative class members who were separated and the average hourly rate of pay (533 employees x [(8 hours x \$21.59) x 30 days = \$2,761,792]). *Id.* ¶ 41.

For wage statements, Plaintiff calculates total penalties under Labor Code Section 226(e) at \$670,900 (794 x \$50 + 6,309 x \$100). Rosenthal Decl. ¶ 39.

Thus, Plaintiff estimated that Defendant would face potential liability of approximately

1 \$5,899,046 if Plaintiff succeeded on all his claims at trial. Rosenthal Decl. ¶ 42.

2 Plaintiff estimated that Defendant could face civil penalties in the amount of  
3 approximately \$3,588,000 if Plaintiff were successful at trial and the Court applied a penalty of  
4 \$100 per pay period for three different violations (meal periods, rest periods, and wage  
5 statements). *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008); *accord*  
6 *Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.*, 2009 WL 2448430, at  
7 \*9 (S.D. Cal. Aug. 10, 2009) (“[u]nder California law, courts have held that employers are not  
8 subject to heightened penalties for subsequent violations unless and until a court or commissioner  
9 notifies the employer that it is in violation of the Labor Code”); *see also Bernstein v. Virgin Am.,*  
10 *Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) (holding no subsequent penalty unless prior citation or  
11 court ruling). Rosenthal Decl. ¶ 44.

12 Even assuming Plaintiff ultimately prevailed on the PAGA claims, the Court still has  
13 discretion to reduce any PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the Court can  
14 decline to award PAGA penalties where “if, based on the facts and circumstances of the particular  
15 case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or  
16 confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks*  
17 *Corp.*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the  
18 maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at complying  
19 with the law. 30 Cal. App. 5th 504, 517 (2018). Upon review, the Court of Appeal found such  
20 reduction to be proper. *Id.* at 539. Similarly, this Court reduced the maximum PAGA penalty  
21 amount by 93% in *Parr v Golden State Overnight Delivery Service, Inc. Parr v Golden State*  
22 *Overnight Delivery Service, Inc.*, 2014 WL 11199453 (Alameda Sup. Ct. July 10, 2014). With  
23 respect to the Labor Code § 226 claim, this Court noted in assigning a \$15 penalty, “[a]mong the  
24 long list of possible Labor Code violations that could support a PAGA action, this is by no means  
25 the most serious, and there is no evidence that any employee was paid less than what was due or  
26 was otherwise harmed by the form of wage statement used by [defendant].” *Id.* A 90% reduction  
27 on the PAGA penalties here would result in potentially available penalties of approximately  
28 \$358,800. Rosenthal Decl. ¶ 45.

1 In *Magadia v. Wal-Mart Assocs., et al.*, while the trial court imposed substantial PAGA  
2 penalties upon the defendant, such amount still represented reductions of 67% and 80% of the  
3 potential PAGA penalties at issue. 2019 U.S. Dist. Lexis 91792 at \*87-\*100 (N.D. Cal. May 31,  
4 2019). Moreover, this was only after the plaintiff in *Magadia* had prevailed after trial. Thereafter,  
5 the Ninth Circuit reversed the trial court's ruling eliminating the judgment altogether, which  
6 demonstrates the significant risk presented in moving forward with litigation. *Magadia v. Wal-*  
7 *Mart Assocs., Inc.*, 999 F.3d 668, 677 (9th Cir. 2021).

8 Based on the information provided by Defendant, Plaintiff's counsel estimated total class  
9 damages and penalties to be as high as approximately \$5,899,046 if Plaintiff were successful in  
10 certifying all of the claims and prevailing on the merits. Rosenthal Decl. ¶ 42. Plaintiff's success  
11 was far from certain, given the risks addressed above and the possibility of years of appeal and  
12 reversal of judgment. Therefore, the proposed settlement of \$380,000.00 is fair, adequate, and  
13 reasonable and well within the range accepted by most courts. *See Lesevic v. Spectraforce Techs.,*  
14 *Inc.*, 2021 WL 1599310, at \*3 (N.D. Cal. Apr. 23, 2021) (noting wage and hour class fund of  
15 \$600,000 that compensated for 7% of maximum potential recovery was reasonable); *Van Ba Ma*  
16 *v. Covidien Holding Inc.*, U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (approving  
17 wage and hour class settlement which obtained only 9.1% of projected damages); *Villegas v. J.P.*  
18 *Morgan Chase & Co.*, 2012 WL 5878390, at \*6 (N.D. Cal. Nov. 21, 2012) (holding that  
19 settlement of approximately 15% of the potential recovery was fair and reasonable); *McPhail v.*  
20 *First Command Fin. Planning, Inc.*, 2009 WL 839841, at \*5 (S.D. Cal. Mar. 30, 2009) (approving  
21 settlement equal to approximately 7% of estimated damages); *Int'l Bhd. Of Elec. Workers Local*  
22 *697 Pension Fund v. Int'l Game Tech., Inc.*, 2012 WL 5199742, at \*3 (D. Nev. Oct. 19, 2012)  
23 (approving settlement recovering approximately 3.5% of maximum exposure).

24 **E. The Court Should Preliminary Approve the Award of Litigation Costs and Fees**

25 California state and federal courts have recognized that an appropriate method for  
26 determining award of attorneys' fees is based on a percentage of the total value of benefits to  
27 class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254  
28 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) ("*Serrano III*"); *Boeing Co. v. Van Gemert*,

1 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997).  
2 The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to “spread  
3 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not  
4 bear the entire burden alone.” *Vincent*, 557 F.2d at 769.

5 Under California law, the award of attorneys’ fees in common fund wage and hour class  
6 action settlements should start with the percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal.  
7 5th 480, 503 (Aug. 11, 2016) (“We join the overwhelming majority of federal and state courts in  
8 holding that when class action litigation establishes a monetary fund for the benefit of the class  
9 members, and the trial court in its equitable powers awards class counsel a fee out of that fund,  
10 the court may determine the amount of a reasonable fee by choosing an appropriate percentage of  
11 the fund created”). Under the percentage of the fund method, the Court’s objective remains to  
12 “mimic the market” in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir.  
13 1998) (J. Posner) (“When a fee is set by a court rather than by contract, the object is to set it at a  
14 level that will approximate what the market will set....The judge, in other words, is trying to  
15 mimic the market in legal services”).

16 An award of one-third of the fund in attorneys’ fees mimics the marketplace as it “is  
17 supported by the fact that typical contingency fee agreements provide that class counsel will  
18 recover 33% if the case is resolved before trial and 40% if the case is tried.” *Fernandez v. Victoria*  
19 *Secret Stores LLC*, 2008 WL 8150856, \*16 n. 59 (C.D. Cal. July 21, 2008) (citing Brickman,  
20 *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees*,  
21 81 Wash U. L. Q. 653, 659 n. 11 (Fall 2003)). Indeed, “empirical studies [that] show that...fee  
22 awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162  
23 Cal. App. 4th 43, 66 n. 11 (2008).

24 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent  
25 of the fund. 1 Cal. 5th at 506. And this was based on a lodestar amount that required a multiplier  
26 of 2.13. *Id.* at 487. As the Court held, only when the multiplier is “extraordinarily high or low  
27 [should] the trial court [] consider whether the percentage method should be adjusted so as to  
28 bring the imputed multiplier within a justifiable range.” *Id.* at 505.

Moreover, in the *Laffitte* intermediate court decision, the court observed that “33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits.” *Laffitte v. Robert Half Int’l*, 231 Cal. App. 4th 860, 871 (2014). Here, the fee award representing one-third of the fund clearly falls within that range, and is consistent with other comprehensive surveys of class action settlements and fee awards. *See Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that “[m]ost fee awards were between 25 percent and 35 percent, with almost no awards more than 35 percent”); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn. 16 (2010) (independent studies of class action litigation nationwide conclude that fees representing one-third of the total recovery is consistent with market rates).

The results delivered by Class Counsel also support the requested percentage of the fund. Here, the Parties have agreed to a payment of a maximum of one-third (1/3) of the Gross Settlement Amount, *i.e.*, the sum of \$126,666.67, for payment to Class Counsel as attorneys’ fees. The Parties have agreed to a payment of the foregoing attorney’s fees and, thus, this payment should be presumed to be fair. Further, it is not uncommon for courts to award attorneys’ fees as one-third of the settlement amount in wage and hour class action settlements. At the time of Final Approval, Plaintiff’s counsel will evidence to show that a payment of one-third of the recovery is justified and fair when cross-checked under the lodestar method.

Further, the Parties have agreed to reimbursement of Class Counsel’s litigation costs. Class Counsel has, at its own risk, expended costs, for example, to file this instant action, effect service of process, and pay mediation fees and other litigation related costs. Lee Decl. ¶ 6. Based on the foregoing, the court should preliminarily approve the attorney’s fees and costs being requested by the Parties.

**F. The Court Should Preliminary Approve the Award of Settlement Administration Costs**

The Parties have agreed to payment of a maximum of \$12,000.00 to the Settlement Administrator, Phoenix Settlement Administrators, to send notices and to administer this

1 settlement. Phoenix Settlement Administrators is a well-recognized class action settlement  
2 administrator. The Parties believe that the administration fee is reasonable and should be  
3 approved. Rosenthal Decl. ¶ 18.

4 **G. The Court Should Preliminarily Approve the Proposed Payment to the Class**  
5 **Representative**

6 Plaintiff requests an enhancement payment for her role in acting as class representative.  
7 Specifically, Plaintiff requests a Service Award of \$10,000.00. Plaintiff met with Class Counsel  
8 on various occasions to discuss the case, provide documents and information to Class Counsel,  
9 and review the Settlement Agreement. Declaration of Sunshine Deering (“Deering Decl.”) ¶¶ 8-  
10 10. Moreover, as part of her duties as Class Representative, Plaintiff provided information,  
11 evidence, and documents that resulted in this settlement. In addition to the invaluable services that  
12 Plaintiff provided, she also took significant risks, both professionally and monetarily, in acting as  
13 Class Representative and seeking benefits on behalf of the Class. Because the claims alleged by  
14 the Class Representative involved the payment of costs to the prevailing party, Plaintiff could  
15 have possibly faced paying the fees and costs of Defendant, had Plaintiff not prevailed in this  
16 action. *Id.* ¶ 9. Plaintiff also agreed to provide a general release and waiver of the protections of  
17 Civil Code § 1542. Agreement ¶ 31.

18 Given that future employers are much less likely to hire individuals who have filed suit  
19 against their prior employer, particularly cases of this nature, Plaintiff asserts that she may face  
20 prejudice in the future from other potential employers. Plaintiff took this risk upon herself and the  
21 whole Class benefited from these risks taken by Plaintiff. Class Members did not have to file  
22 individual lawsuits and bear the risks of payment of fees and costs if they did not prevail, nor did  
23 they have to face the potential for retaliation and not getting future employment had they filed a  
24 public lawsuit.

25 Notably, courts have routinely granted approval of representative enhancements for far  
26 greater amounts than the amounts sought by Plaintiff in this case. *See, e.g., Van Vranken v.*  
27 *Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000);  
28 *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two

incentive awards of \$55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at \*51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 Incentive award to class representative in ERISA case). Here, Plaintiff requests an enhancement of \$10,000.00, which is reasonable and consistent with case law.

## **VI. THE PROPOSED CLASS MEETS ALL CERTIFICATION REQUIREMENTS**

The parties also may, at the preliminary approval stage, request that the court provisionally approve certification of the class—conditional upon final approval of the settlement. “[P]re-certification settlements are routinely approved if found to be fair and reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001); *Accord Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (although the settlement was reached before any “adversary certification,” the court was satisfied that it was “fair, adequate and reasonable”); *In re Baldwin-United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y. 1984) (“many courts have employed this practice in the name of judicial efficiency in order to facilitate apparently beneficial settlement proposals”).<sup>2</sup> As further explained by Professor Newberg:

The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal...may be set out in conditional orders granting tentative approval to the various items submitted to the court. Three basic rulings are often conditionally entered at this preliminary hearing. These conditional rulings may approve a temporary Settlement Class Members, the proposed settlement, and the class counsel’s application for fees and expenses.

<sup>4</sup> *Newberg on Class Actions* § 11.26.

In addition to such terms as class identification, settlement amount, and payment procedures, the settlement reached among the Parties contains a provision pursuant to which the

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<sup>2</sup> In determining the fairness and reasonableness of a proposed settlement, California courts may look to federal cases for guidance. *See Wershba*, 91 Cal. App. 4th at 239-40.

Parties stipulate to the Court’s provisional certification of the Class for the purposes of this settlement only. Agreement ¶ 27.

**A. The Class is Ascertainable and Sufficiently Numerous**

The Class that Plaintiff seeks to conditionally certify is ascertainable. “Class members are ‘ascertainable’ where they may be readily identified without unreasonable expense or time by reference to official records.” *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1334 (2008); *see also Faulkinbury v. Boyd & Assocs., Inc.*, 216 Cal. App. 4th 220, 240 (2013) (same). Here, members of the Class are readily identifiable. Defendant has determined that there are approximately 794 individuals that comprise the Class. Agreement ¶ 2. Furthermore, the Class is sufficiently numerous. Courts generally find that numerosity is satisfied if the class includes forty or more members. *See Villalpando v. Excel Direct Inc.*, 303 F.R.D. 588, 605-606 (N.D. Cal. 2014); *see also Jordan v. L.A. County*, 669 F.2d 1311, 1320 (9th Cir.) (noting, in dicta, that the court “would be inclined to find the numerosity requirement...satisfied solely on the basis of [39] ascertained class members”), *vacated on other grounds*, 459 U.S. 810 (1982).

**B. There are Common Questions of Law and Plaintiff’s Claims are Typical of the Class**

The commonality requirement is met when there are questions of law and fact common to the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared legal issues with divergent legal factual predicates is sufficient, as is a common core of salient facts couple with disparate legal remedies within the class”). Commonality requires only that some common legal or factual questions exist; the plaintiffs need not show that all issues in the litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981) The defendant’s conduct is central to the commonality inquiry. *See City of San Jose v. Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971). Where the employer’s conduct is uniformly directed at a class of employees, as Plaintiffs contend it is here, the class wide impact of the defendant’s policies satisfies the commonality requirement. *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

Plaintiff alleges that Defendant, as a matter of corporate policy and procedure failed to: (1)

1 reimburse business-related expenses in violation of Labor Code § 2802; (2) provide off-duty meal  
2 periods in violation of Labor Code §§ 226.7 and 512; (3) provide off-duty rest periods in violation  
3 of Labor Code § 226.7; (4) provide accurate, itemized wage statements in violation of Labor Code  
4 § 226; and (5) engaged in unlawful business practices in violation of Business and Professions  
5 Code § 17200, *et seq.* Rosenthal Decl. ¶ 4; Deering Decl. ¶¶ 4-6. Thus, Plaintiff submits that her  
6 claims are typical to those of the Class.

### 7 **C. Plaintiff and Class Counsel Have Adequately Represented the Class**

8 Plaintiff contends that the adequacy requirement is also met. “Adequacy of representation  
9 depends on whether the plaintiff’s attorney is qualified to conduct the proposed litigation and the  
10 plaintiff’s interests are not antagonistic to the interests of the class.” *McGhee v. Bank of Am.*, 60  
11 Cal. App. 3d 442, 450 (1976). Here, Plaintiff does not have any interests adverse to the Class, nor  
12 have any such issues been raised or presented. Deering Decl. ¶ 7. Plaintiff has taken all necessary  
13 steps to represent the interests of the Class, by providing information and documents. *Id.* ¶ 8. For  
14 such reasons, Plaintiff submits that she has adequately represented the Class and will continue to  
15 do so.

16 Further, as detailed in their declarations, Class Counsel are experienced and well-qualified  
17 class action litigators who have litigated many wage and hour class actions and have each been  
18 certified as class counsel in numerous other class actions, particularly wage and hour class  
19 actions. Rosenthal Decl. ¶ 53; Lee Decl. ¶¶ 7-9. From the inception of the case, Class Counsel  
20 have solely represented the interest of the Class.

## 21 **VII. CONCLUSION**

22 Here, the proposed settlement is fair, adequate, and reasonable. It will result in both  
23 substantial monetary benefits to Class Members; it is non-collusive; and it was achieved as the  
24 result of informed, extensive, and arm’s length negotiations conducted by counsel for the  
25 respective Parties who are experienced in wage and hour class action litigation. For the foregoing  
26 reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the proposed  
27 settlement, sign the proposed Order, approve and authorize mailing of the proposed Class Notice,  
28 and set a date for a final approval hearing.

1  
2 DATED: April 17, 2023

DIVERSITY LAW GROUP, P.C.

3  
4 By:   
5 Larry W. Lee  
6 Nicholas Rosenthal  
7 Attorneys for Plaintiff Sunshine Deering and the  
8 Class  
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1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3  
4 STATE OF CALIFORNIA ]  
5 COUNTY OF LOS ANGELES ]ss.  
6 ]

7 I am employed in the County of Los Angeles, State of California. I am over the age of 18  
8 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250,  
9 Los Angeles, California 90071.

10 On April 17, 2023, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY**  
**APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF**  
**POINTS AND AUTHORITIES IN SUPPORT**
- 12 **2. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION**  
**FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- 13 **3. DECLARATION OF NICHOLAS ROSENTHAL IN SUPPORT OF PLAINTIFF'S**  
**MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**  
**SETTLEMENT**
- 14 **4. DECLARATION OF SUNSHINE DEERING IN SUPPORT OF PLAINTIFF'S**  
**MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**  
**SETTLEMENT**
- 15 **5. [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR**  
**PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

16 on the interested parties in this action as follows:

17  
18 Nathan V. Okelberry  
19 Drew M. Tate  
20 Natalie Larios  
21 Melody Biglay  
22 FISHER & PHILLIPS LLP  
23 444 South Flower Street, Suite 1500  
24 Los Angeles, California 90071  
25 [nokelberry@fisherphillips.com](mailto:nokelberry@fisherphillips.com)  
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28 [mbiglay@fisherphillips.com](mailto:mbiglay@fisherphillips.com)

*Attorneys for Defendant Roman Empire ABA Services, Inc.*

1                      X          BY ELECTRONIC SERVICE: Based on a court order I caused the above-  
2 entitled document(s) to be served through the ACE E-Filing System at the website  
3 [www.efile.acelegal.com](http://www.efile.acelegal.com), addressed to all parties appearing on the electronic service list for the  
4 above-entitled case. The service transmission was reported as complete and a copy of the filing  
5 receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this  
6 office.

7                    I declare under penalty of perjury under the laws of the State of California that the above  
8 is true and correct. Executed on April 17, 2023, at Los Angeles, California.

9                      
10                    \_\_\_\_\_  
11                    Erika Mejia